

### **REMARKS**

In the Office Action, the Examiner noted that claims 1-11 and 15-21 are pending in the application; that claims 1-10 and 15-21 are rejected; and that claim 11 is objected to. By this response, claims 1, 6, 11, 15, 16 and 19 have been amended, and new claims 22-23 have been added. Thus, claims 1-11 and 15-23 are pending in the application.

Also provided herein is a Petition for Extension of Time Under 37 C.F.R. §1.136(a) requesting an extension of three months to the period for filing a reply.

### **Rejections Under 35 U.S.C., §102**

Claims 1-4, 6, 7, and 15-21 are rejected under 35 U.S.C. §102(b) as being anticipated by *Gallo* (U.S. Patent No. 5,626,570). Claims 15, 16, and 19-21 are rejected under 35 U.S.C. §102(b) as being anticipated by *Keyes* (U.S. Patent No. 5,913,407). Independent claims 1, 6 and 15 have been amended to add a sensor unit. The Examiner indicated that recitation of a combination of a garment and a sensor might overcome these objections. Accordingly, claims 2-5, 7-10, and 16-21 are also amended by way of dependency on the amended independent claims.

With respect to rejection of claims 15, 16 and 19-21, 35 U.S.C. §102(b) as being anticipated by *Keyes*, Applicants disagree with the Examiner in that *Keyes* does not teach "means for inhibiting the passage of light to a sensor unit"; namely, the utilization of a light opaque fabric. Accordingly, the structure is not equivalent to Applicants' claimed carrier for a biophysical sensor.

The anticipation rejection under 35 U.S.C. §102(b) is believed to be overcome by the amendments made herein.

Withdrawal of these rejections is respectfully requested.

### **Rejections Under 35 U.S.C., §103**

Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Gallo*. Claims 6 and 8-10 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Stephens, et al.* (U.S. Patent No. 5,454,376) in view of *Keyes*.

Applicants respectfully disagree with the Examiner's assertion that claims 6 and 8-10 (rejected under 35 U.S.C. §103(a)) are obvious and unpatentable over *Stephens, et al.* in view of *Keyes*. The Examiner has asserted that *Stephens* teaches the use of a breathing condition monitor with other sensors (see col. 9, lines 40--60). However, *Stephens* does not teach an infant's shirt usable with other sensors that specifically rely on the use of a light opaque fabric with sensors that are in skin contact with a patient and that communicate optically with the skin of the patient by being placed proximate a patient's thoracic region. Applicants assert that it would not have been obvious to modify *Stephens* to allow sensors to have access to a patient through holes in a pocket. Applicants assert that it does not involve a mere substitution of one known configuration sensor for another. *Stephens* does not teach the specific sensor configuration, nor the provision of a retaining pocket having a light opaque fabric opposite an opening on another side.

The anticipation rejection of claims 6 and 8-10 under 35 U.S.C. §103(a)

is believed to be overcome by the amendments presented herein.

Withdrawal of these rejections is respectfully requested.

**Allowable Subject Matter**

Applicants respectfully acknowledge the allowable subject matter of claim 11 and have placed claim 11 in independent form by incorporating the limitations of claims, 6, 8, 9 and 10 within amended claim 11.


Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**CONCLUSION**

For all the reasons advanced above, Applicant respectfully submits that the application is in condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview before issuance of any such subsequent action.

Respectfully submitted,

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